IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6109 of 2000
with
Special civil Applications No.6110, 6111, 6112, 6113, 6114, 6115, 6116, 6117, 6118, 6119, 6120, 6121, 6122, 6123, 6124, 6125, 6126, 6127, 6128, 6129, 6130, 6131, 6132, 6133, 6134, 6135, 6136, 6137, 6138, 6139, 6140, 6141, 6142, 6142, 6144, 6145 and 6146, all of 2000.
(Total : 38 matters)

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GE LIGHTING (INDIA) LTD

Versus

STATE OF GUJARAT

Appearance:
Mr.K.S.NANAVATI for NANAVATI ASSOCIATES for Petitioners in all the matters
Mr. I.M.PANDYA & MR. R.V.DESAI, A.G.Ps. for Respondent No.1 State of Gujarat (in all matters).
RULE SERVED for Respondent No. 2
MRS SANGEETA N PAHWA for Respondent No. 3
(in all the petitions)

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 24/04/2001

ORAL COMMON JUDGEMENT

1. These petitions involving the same questions of fact and law are proposed to be disposed of by a common judgment.

2. The petitioners in all these petitions have challenged the order of Reference dated 3.2.2000 (Annexure : A) made by the Government of Gujarat referring the industrial dispute, consequent upon failure of conciliation, to the Industrial Tribunal No.5 at Ahmedabad for adjudication of industrial disputes. Though the petition runs in 15 pages the factual and legal controversy in these petitions is very much limited and confined to only one aspect, namely, whether the appropriate Government, namely, the State Government committed any jurisdictional error in passing the impugned order of Reference dated 3.2.2000 (Annexure : A). The stand of the petitioners is that the appropriate government, viz. the State Government committed jurisdictional error inasmuch as it did not prima facie satisfy itself before passing the impugned order of Reference (i) whether the persons claiming to be workmen are workmen within the definition of Section 2(s) of the Industrial Disputes Act (for short "I.D. Act") and (ii) whether there existed any industrial dispute or not.

3. The stand of the respondents in the counter Affidavit is that the order of reference is purely administrative order and as such no petition under Article 226 of the Constitution of India can be entertained and maintained to find out whether there was sufficient material before the Government for passing the order of reference or not. The stand for the State Government is that the so called jurisdictional facts could not be decided by the state Government because it is within the province and jurisdiction of the Industrial Tribunal to determine whether persons raising charter of demand are workmen or not and whether the relationship of employer and employee exists between the petitioner and the so called workmen and that the question whether there existed any industrial disputes or not is also not to be decided by the State Government because this question, namely, as to what industrial dispute arose between the parties is to be decided by the Industrial Tribunal.

4. Shri K.S.Nanavati, learned Counsel for the petitioners, Ms.Sangita Pahwa, learned Counsel for the

workmen and Shri I.M.Pandya and Shri R.V.Desai, learned A.G.Ps. were heard at length on the controversy raised before this Court in these petitions.

5. A reference of dispute whether u/s.10 or Section 12(5) of the I.D.Act is to be made by the appropriate Government and by no other Authority. If there is no other authority competent to refer the dispute then the jurisdiction lies with the State Government to refer the dispute to the Labour Court or the Industrial Tribunal or the National Tribunal. It is not a case of prima facie lack of jurisdiction in the State Government to refer the dispute.

6. Shri Nanavati, however, argued that while making a reference u/s. 12(5) read with Section 10 of the Act it was obligatory for the Government to come to a prima facie satisfaction that the persons seeking reference were workmen within the meaning of Section 2(s) of the Act and that there existed industrial dispute as defined u/s.2(k) of the Act.

7. The order of reference is contained in Annexure : A. The reference had been made under the orders of the Government of Gujarat and the said order has been communicated by the Section Officer in Labour and Employment Department vide Annexure : A. Before examining the validity of the order of reference the contentions raised by Shri Nanavati have to be dealt with first.

8. Section 10(1) of the Act provides that "where the appropriate Government is of the opinion that industrial dispute exists or is apprehended, it may at any time by order in writing refer the dispute to a Board for promoting a settlement, etc. and to other authorities mentioned in sub-clause (a) to (d) of Section 10(1) of the Act. Section 12 deals with duties of Conciliation Officer. In this case it is not in dispute that the dispute was referred to the Conciliation Officer. The Conciliation Officer tried to resolve the dispute but he could not do so because the parties did not cooperate in the proceeding especially the petitioner and nobody appeared before the Conciliation Officer from the side of the petitioner company. The counter Affidavit of under Secretary Sri Mohan Chavda shows that the Conciliation Officer called the parties on various dates in case No.113/99 and tried to settle the matter but nobody remained present and no reply had been filed that they are working as Officer, Senior Officer, Manager, etc. and as the settlement could not be possible failure

report was sent to the Government of Gujarat. It is also deposed in this para that the Conciliation Officer has no jurisdiction to close the case when the dispute exists between the parties and the conciliation officer has to refer the matter to the State Govt. Section 12(4) of the Act provides that if no such settlement is arrived at, the conciliation officer shall, as soon as practicable after the close of the investigation, send to the appropriate Government a full report setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with a full statement of such facts and circumstances, and the reasons on account of which, in his opinion, a settlement could not be arrived at. It is clear from the counter Affidavit of Shri Mohan Chavda that failure report was submitted to the Government by the conciliation Officer. Section 12(5) of the Act is then immediately attracted on submission of failure report by the Conciliation Officer.

9. Sub.Section 5 of Section 12 provides that "if on a consideration of the report referred to in sub-section (4) the appropriate Government is satisfied that there is a case for reference to a Board (Labour Court, Tribunal or National Tribunal), it may make such reference. Where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reason therefor." Thus, two situations are contemplated under Sect. 12(5) of the Act. One is where the appropriate Government is satisfied that there is a case for reference to a Board, Tribunal, Labour Court, etc. it make such reference. Here the emphasis is satisfaction of the Government that there is a case for reference and beyond this the section does not contemplate anything more. The second provision under sub.section 5 is that if the appropriate Government does not make reference it is bound to communicate with reasons to the parties why reference is not to be made. Thus, reasons are to be recorded only when the appropriate Government decides not to make reference. To put it otherwise when the Government rejects the reference it is required to communicate the parties reason for rejection of reference.

10. At this stage it will also be relevant to mention the provisions of Section 10(1) of the Act. Before coming to Section 10(1) of the Act it would be desirable to revert back to the order of reference Annexure : A. It provides that the appropriate Government in exercise of powers u/s.10(1)(d) of the I.D. Act has made reference for further adjudication to the Industrial

Tribunal. It is thus to be seen what is the scope of Section 10(1) of the Act. It provides that where the appropriate Government is of opinion that industrial dispute exists or is apprehended, it may at any time, by order in writing refer the dispute to a Board, Authorities, Tribunal, etc. mentioned under the section. The essential requirements of Section 10(1) are therefore firstly that the appropriate Government should be of the opinion that any industrial disputes exists or such industrial dispute is apprehended and then it can refer such dispute by an order in writing. In the case before me it is not a case of apprehended industrial dispute, rather it is a case of subsisting industrial dispute. Shri Nanavati referring to section 10 has pointed out various definitions contained in Section 2 of the Act. Section 2(k) defines industrial dispute which means any dispute or difference between employers and employers or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person. The charter of demands contained in Annexure to the order of reference shows that the dispute was raised with reference to classification of employees, pay scales, Dearness Allowance, other allowances, leave travel concession, medical benefits, etc. These were the conditions of labour within the meaning of Section 2(k) of the Act. Shri Nanavati, however, coantended that everybody cannot approach either the conciliation Officer or the appropriate Government requesting for making a reference or for settlement or conciliation of disputes. According to him when the dispute arises between the employer and employer and between the employer and the workmen or between the workmen and the workmen then only such dispute can be said to be industrial dispute which can be taken up for settlement in conciliation proceeding or which could be referred by the state Government to the Labour Court or Industrial Tribunal. According to him the appropriate Government has not applied its mind to the fact whether the persons claiming the charter of demands are workmen or not. For definition of workmen he referred to Section 2(s) of the Act which means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or

retrenchment has led to that dispute, but does not include any such person enumerated in sub-clause (i) to (iv) of Section 2(s) of the Act. In Para : 2 of the counter affidavit of Kamlesh K. Mehta, respondent No.3 in one of the petitions, it is deposed that the workers involved in the demand were terminated by the petitioner company and consequently a complaint u/s.33 (A) was filed by the respondents.

11. Now looking to this provision highlighted by Shri Nanavati and also considering his argument it is to be seen what is the nature of the order of reference and what is the requirement for the appropriate Government in passing such orders and also what is the scope of judicial review in case the order of reference is passed.

12. As referred earlier Section 10(1 provides that where the appropriate Government is of the opinion that industrial dispute exists or is apprehended, it may at any time, by order refer such dispute to the Authority or Tribunal mentioned in this section. The question is whether the opinion of the appropriate Government for making reference should be formed on subjective satisfaction or on objective satisfaction. In my opinion, objectivity is required from the Government when the reference is refused in view of Section 12(5) of the Act. Later part of this subsection provides that where the appropriate Government does not make such a reference it shall record and communicate to the parties concerned its reason therefor. The legislative mandate therefore is that in case the appropriate Government decides not to make reference an order has to be passed in writing giving reasons thereof. Thus the legislative intended that if the order has to be passed by the appropriate Government giving its reasons for rejecting the reference then such order of the Government should be based on objective satisfaction and not on subjective satisfaction. As against this if the order of reference is to be made u/s.10(1) then only subjective satisfaction of the Government is expected viz. to form an opinion whether industrial disputes exists or it is apprehended and that detailed reasons are not required to be given by the Government while making reference u/s.10(1) of the I.D.Act.

13. It is very difficult to accept the contention that the impugned order Annexure : A is a specimen of non-application of mind and it lacks two jurisdictional facts. In the first para of the impugned order it is clearly mentioned that the Government of Gujarat is of the opinion that the matters relate to industrial dispute as described in annexure attached herewith and pertains

to G.E.Lighting (India) Limited, Nadiad and its workmen. This Para, therefore, gives clear impression that the Government of Gujarat formed an opinion on two points viz. that the charter of demands contained in Annexure : A prima facie amounted to industrial dispute and secondly that such dispute was between G.E.Lighting India Limited, Nadiad and its workmen. The Government was, therefore, prima facie of the opinion that the persons claiming charter of demands were workmen. Whether the opinion formed by the Government on these two points, namely, existence of industrial dispute and the claim of charter of demand by the workmen can be said to be erroneous or without any material. This will be the subject of subsequent discussion when the matter is taken up for consideration what is the scope of judicial review in such matters.

14. In second para of the order of reference it is further mentioned that the Conciliation Officer submitted failure report in respect of what demands were made by Gujarat Mazdoor Panchayat Act in connection with conciliation case under the Industrial Disputes Act u/s.12(4). This, therefore, follows that the Government had considered two things, firstly the failure report submitted by the Conciliation Officer and also the charter of demands annexed with the impugned order of reference Annexure : A. There was no material from the side of the petitioner company placed either before the Conciliation Officer or before the appropriate Government to show that prima facie the claimants were not workmen or that there arose no industrial dispute within the meaning of the Act. In the absence of any material contrary to what was placed before the appropriate Government it cannot be said that the opinion formed by the appropriate Government was the result of non-application of mind. The Government was expected to apply its mind only to the material placed before it. The Government could not have compelled the petitioner viz. the unwilling party who never intended to appear before the Conciliation Officer or before the Government to file material rebutting that there existed industrial dispute or the claimants are the workmen. Consequently it cannot be said that the prima facie opinion formed by the Government is not in accordance with the provisions of Section 10(1) of the Act. If this is so, then there is hardly any scope for interference in the order of reference.

15. The scope of judicial review in such matters has been considered by the Apex Court in various cases. Some of those are where the references were rejected by the

appropriate Government whereas the other cases are where the references were allowed by the Government and references were made to the Industrial Tribunal, etc.

16. What is expected from the Appropriate Government is to form a prima facie opinion about existence of dispute or apprehended dispute and also that there was prima facie material to believe that there was relationship of employer and employee between the parties and the claimants are workers within the meaning of Section 2(s) of the Act. For this, evidence was not to be accepted by the Government nor any adjudication on these two points was required from the Government. In TELCO CONVOY DRIVERS MAZDOOR SANGH & ANR. V/s. STATE OF BIHAR & ORS., reported in 1989 (II) LLJ 558, the Apex Court held that the appropriate Government can not adjudicate the dispute on merits. The question whether the Convoy drivers are workmen or not is the issue to be referred for adjudication and the appropriate Government can not decline reference on the pretext that such drivers are not workmen. It was further held that though the Government is entitled to form an opinion as to whether industrial dispute exists or is apprehended, it is not something as to adjudication of the dispute itself on merits. The dispute is whether convoy drivers are workmen of TELCO and whether the master and servant relationship exists between Convoy drivers and TELCO and this cannot be decided by the appropriate Government. According to the Apex Court it is impermissible for the Government to decide such question. Further in view of the Apex Court there can be no doubt that appropriate Government was not justified in deciding the dispute. Where the dispute is whether the persons raising the dispute are workmen or not, the same can not be decided by the appropriate Government in exercise of its administrative functions under Sec.10(1) of the Industrial Disputes Act. The case of M.P.Irrigation Karamachari Sangh v/s. State of Madhya Pradesh (1985 - 1- LLJ519can also be referred.

17. In a latest decision of SECRETARY, INDIAN TEA ASSOCIATION v/s. AJIT KUMAR BARAT & ORS., REPORTED IN AIR 2000 SC 915, the Apex Court has held that the appropriate Government would not be justified in making a reference u/s.10 of the Act without satisfying on the facts and circumstances brought to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable that wherever possible for the Government to indicate the nature of dispute in the order of reference. The law on the point has been summarised by the Apex Court in this case, as under :

1. The appropriate Government would not be justified in making a reference under S.10 of the Act without satisfying itself on the facts and circumstances brought, to its notice that an industrial dispute exists or apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.

2. The order of the appropriate Government making a reference under S.10 of the Act is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.

3. An order made by the appropriate Government under S.10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.

4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus and;

5. It would, however, be open to party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

This direction of the Apex Court has been complied with by the appropriate Government inasmuch as it has been considered in the reference order itself that there existed dispute in view of the charter of demands annexed with the reference order. The Government found that it was desirable to refer the dispute. Consequently it cannot be said on the strength of this pronouncement that the appropriate Government has failed to satisfy itself on the facts and circumstances brought to its

notice by the claimants which remained uncontroverted by the petitioner that industrial dispute existed.

18. Regarding nature of the reference order u/s.10 the Apex Court in this very case has held that order of appropriate Government making a reference u/s.10 is an administrative order and not a judicial or quasi-judicial one and the Court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi judicial order. An order made by the appropriate Government under S. 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the Court may in a given case consider the case for a writ of mandamus. It would however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act. Shri Nanavati has failed to convince that what was referred by the appropriate Government is not an industrial dispute. It is also not a case where while making an order of reference the Government took into account any consideration irrelevant or foreign material. As such this Court can not, in the instant case, issue a writ of certiorari quashing the order of reference Annexure : A. Thus, in my opinion, if an order u/s.10 is an administrative order and is not judicial or quasi-judicial order this Court cannot closely scrutinize to see whether there was any material before the Government to support its conclusion as if it was a judicial or quasi-judicial order. Needless to say that there was material before the Government, namely, charter of demands and also failure report submitted by the Conciliation Officer. It has been deposed in the counter Affidavit of Shri Chavda that before the Conciliation Officer the Company petitioner did not appear. Consequently neither before the Conciliation Officer nor before the State Government there was any material to counter the report of the conciliation Officer or the charter of demands. From the charter of demands the government was justified in coming to prima facie opinion about existence of industrial dispute and also about relationship of employer and employee between the parties. Thus, the case of Secretary, Indian Tea Association (Supra) relied upon by Shri Nanavati, to my mind, does not help him.

19.The other case relied upon by Shri Nanavati was

NEDUNGADI BANK LTD. V/S. K.P.MADHAVANKUTTY & ORS., reported in (2000) 2 SCC 455. In this case two points were under consideration before the Apex Court. The first was whether stale dispute which was tried to be referred after a lapse of 7 years could be referred and the second was what is the scope of judicial review when the order is passed u/s.10 of the Act. The Apex Court has held that administrative order which does not take into consideration statutory requirements or travels outside it that is certainly subject to judicial review, limited though it might be, the High Court can exercise its powers under Article 226 of the Constitution to consider the question of the very jurisdiction of the Labour Court. In the case before me at present jurisdiction of the Labour Court is not under challenge. On the other hand the jurisdiction of the appropriate Government to make reference u/s.10 is under challenge. I am unable to hold that While making such reference the administrative order did not take into consideration statutory requirements or it travelled outside. Consequently even limited judicial review as approved by the Apex Court in this case cannot be made applicable to the facts of the case before me.

20. The case of NATIONAL ENGINEERING INDUSTRIES LTD. v/s. STATE OF RAJASTHAN & ORS., reported in (2000) 1 SCC 371 also hardly helps the petitioner. What was held in this case was that existence or apprehension of industrial dispute is a condition precedent for making reference and the High Court can entertain writ petition impugning a reference on the ground of non-existence of an actual or apprehended industrial dispute. This exercise, according to the Apex Court, cannot be done by the Industrial Tribunal which can not examine the validity of reference. Shri Nanavati was right in his contention that in view of this decision he has no alternative but to approach this Court, but merely approaching this Court is not enough. It has to be proved that prima facie there was no industrial dispute in existence which could be referred to the Industrial Tribunal for adjudication. Subjective opinion of the appropriate Government cannot be said to be erroneous or contrary to the material on record.

21. In ABAD DAIRY DUDH VITRAN KENDRA SANCHALAK MANDAL v/s. ABAD DAIRY & ORS., reported in 1999 SCC (L & S) 1079 the appropriate Government refused to make reference on the ground that the persons seeking adjudication were not workmen. The Apex Court did not approve the propriety of such decision of the appropriate Government. Considering the Agreement between the parties and the

interpretation of dispute it was found necessary to consider whether the Agreement reflected the real position of the members in a situation where the status of the members was not clear. The Apex Court held that the denial of reference by the Government merely on the ground that the members were not workmen was improper. Thus, it was a case where reference was refused and the Apex Court held that on such contention reference could not be refused and that neither in writ proceeding before the High Court nor in an Appeal under Article 136 of the Constitution of India decision of such factual contention and allegation could be made.

22. When the Apex Court has already taken a view about the nature of order u/s.10 I do not think it expedient to refer and discuss the Division Bench pronouncement of Karnataka High Court in BANGALORE BAPTIST HOSPITAL SOCIETY, BANGALORE, v/s. STATE OF KARNATAKA & ORS., reported in 1988 LAB.I.C. 1225.

23. The case of THE STATE OF MADRAS v/s. C.P. SARATHY & ANR., reported in AIR 1953 SC 53 also in no way can be applied to the facts of this case, because in this case it was held that the disputes were not particularised. In the case before me the disputes have been particularised because the charter of demands form part of the reference of dispute.

24. There is catena of decisions of the Apex Court that an order u/s.10(1) is an administrative order which is passed while exercising administrative functions of the Government. It is in contradistinction to judicial or quasi-judicial function for which the case of AVON SERVICES (PRODUCTION AGENCIES) PVT. LTD. and INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD, LABOUR LAW JOURNAL, VOL.I, PAGE : 1, can be referred.

25. Since the petitions have been admitted and have been taken up for final hearing, I do not find any merit in the argument of Shri R.V.Desai, learned A.G.P. that the petitions require to be dismissed in limine. Since the petitions have been admitted the contention that these petitions are not maintainable becomes insignificant hence no detailed discussion regarding maintainability of the petition is required. Assuming that the petitions are admitted and are maintainable there is no good ground for invoking jurisdiction under Article 226 of the Constitution of India on the facts and circumstances of the case to interfere with the order of reference which seems to be in accordance with mandate contained in Sections 10(1) and 12(5) of the Act.

26. In the result I do not find any substance in these petitions which are hereby dismissed with no order as to costs.

27. At this stage request is made on behalf of Shri Nanavati for extending interim relief for a period of 2 weeks. The Industrial Tribunal is not going to render Award immediately. There is thus sufficient time for deciding the dispute by the Industrial Tribunal. In the mean time the petitioners can approach the Appellate Court and obtain stay order. This prayer is refused.

Date : April 24, 2001 (D. C. Srivastava, J.)

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